Supreme Court, U.S.
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No. 03-

IN THE

Supreme Court of the United States

GARY G. SHARPE, *et al.*,

Petitioners,

v.

BRUCE CURETON, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether in the face of an extended history of retribution against employees for exercise of political rights, federal courts are powerless to prohibit the guilty public official from continuing the pattern of violations.

II. Whether vague, ambiguous Rule 68 offers defeat the congressional intent of using 42 U.S.C. § 1988 to encourage private citizens to join in the effort to preserve fundamental rights.

III. Whether the continuing violations doctrine applies where a pattern or practice of unconstitutional conduct has been established.

LIST OF PARTIES TO THE PROCEEDINGS

Petitioners are Gary G. Sharpe, William G. Potter, Kenneth F. Scarbrough, Frank E. Potter, and William H. McGinnis, five firefighters who at relevant times, were employed by the City of Knoxville.

Respondents are Bruce Cureton, the former Fire Chief of the City of Knoxville, in his individual and official capacities, Victor Ashe, Mayor of the City of Knoxville, in his individual and official capacities, and the City of Knoxville.

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The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 319 F.3d 259 (6th Cir. 2003). The original opinion is contained in the Appendix ("App.") at page 1a. The Memorandum Opinions and Orders of the United States District Court for the Eastern District of Tennessee, at Knoxville, from which both parties appealed, are unreported and are included in the Appendix at 38a and 78a.

STATEMENT OF THE BASIS FOR JURISDICTION

Federal Subject Matter Jurisdiction in this action is predicated upon 28 U.S.C. § 1331 and 42 U.S.C. § 1983. Appellate jurisdiction arose under Fed. R. Civ. P. 54 and proceeds under Rule 10 of the United States Supreme Court Rules. The opinion of the United States Court of Appeals for the Sixth Circuit was filed on February 13, 2003. Petitioners filed a Petition for Rehearing *En Banc*, which was denied on April 10, 2003 (App. at 117a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The statutory and constitutional provisions involved in this action are 42 U.S.C. §§ 1983, 1988, and the First and Fourteenth Amendments of the United States Constitution.

STATEMENT OF THE CASE

On the eve of the 1995 mayoral election in Knoxville, Tennessee, the incumbent Mayor began his campaign of retaliation. He abruptly transferred a number of prominent civil service protected firefighters who had supported his opponent, or who had remained neutral in the election (including a Deputy Chief who was transferred to a supply closet, two Assistant Chiefs and a Fire Officer). App. at 4a-5a. In the face of grievances filed to protest his clearly illegal acts, the retaliation continued. When merit pay awards for 1995 were announced a few weeks later, **all** the firefighters who supported the Mayor's opponent were denied merit pay (App. at 6a), and not a single supporter of his opponent received a promotion that year. After the filing of the federal lawsuit, each of the Petitioners was retaliated against for asserting his rights in court in that Respondents refused to even consider them for 1996 merit pay increases because the Petitioners had filed this lawsuit. App. at 94a.

In addition to this pattern of retaliatory acts against the named Plaintiffs, the proof established that the Mayor had a broader, longstanding policy of political retaliation which began in 1988 (his first term in office). One witness explained the Mayor's hiring and promotion policy graphically. He personally watched as the Mayor struck names of firefighters' sons from hiring lists explaining that he did not feel the fathers had done enough for him in his campaign. App. at 8a. He observed the Mayor "skipping around" the candidates on the promotional list and rejecting those who had not supported him. App. at 86a-87a. That witness later became a victim of the Mayor's illegal policy when he chose to support someone other than the Mayor in his second campaign. He was demoted two ranks, his pay was

substantially cut, and he was denied tuition reimbursement. App. at 87a. Others also testified as to their experience with the political demands of the Mayor and the consequences for those who refused to "fall in line." The jury found the 1995 transfers were politically motivated. The jury also found the 1995 transfers were a part of a pattern and/or over-arching scheme of political (systemic) discrimination (App. at 87a), so that the transfer claims (otherwise asserted a few days outside the one year limitations period) were not time barred.

The jury awarded a total of $30,645.00 in compensatory damages, which the Trial Court reduced by approximately half when it held as a matter of law that the 1995 transfer claims were untimely and refused to apply the continuing violations doctrine. App. at 3a. The jury's verdict was not appealed. Their findings of retaliation and over-arching scheme stand unchallenged.

Following the trial, the Respondents filed a motion for costs claiming the Rule 68 offers they had tendered exceeded the relief granted. App. at 10a. The Trial Court initially granted Respondents' motion, then later reversed itself on motion to alter or amend. *Id.* The Petitioners argued that the offers were insufficiently definite to constitute valid offers. App. at 97a. *See also* Respondents' offers, App. at 98a-107a. The Trial Court agreed with Petitioners, noting that their counsel had telephoned Respondents' counsel asking that the offers be clarified and also wrote to them for clarification of their offer of an "agreement" (versus an injunction), not to discriminate, and W. Potter's "base rate," but Petitioners were stonewalled. App. at 108a and 110a. The Respondents at no time denied the telephone call or that they received the requests for clarification. The Trial Court also found that the Respondents had waited until after trial to calculate

the monetary value of the offers rather than doing so when the offers were made. App. at 109a. Based upon the foregoing, and the numerous ambiguities in the offers (App. at 107a-112a), the Trial Court held the offers were invalid (App. at 113a) and awarded Petitioners $230,538.87 of the $357,775.20 originally requested. App. at 67a. Both parties appealed that Order.

Throughout this litigation, however, the Mayor vigorously defended his right to take such retaliatory actions, and demanded qualified immunity both in the Trial Court, on pre-trial appeal (App. at 92a), and by Petition for Certiorari to this Court. App. at 7a. The Sixth Circuit rightly rejected the claim for qualified immunity, holding that "defendants have never given a satisfactory answer to the question of how a reasonable official could read the Supreme Court's opinion in *Rutan* . . . and still consider it constitutional to punish the plaintiffs in the manner the plaintiffs claim to have been punished for exercising their free speech rights." App. at 93a. The Mayor continued to vigorously assert his triviality defense characterizing the political retaliation as "relatively minor" and of no "constitutional significance." Even after the jury found ten separate civil rights violations by the Respondents, the Mayor called a press conference and his representatives continued to insist that the Mayor's actions were "insignificant" and claimed the jury's verdict was a "pure victory" for Respondents. The post-trial interview made the Mayor's state of mind clear: his "victory" was that, having escaped punitive damages, there would be no damages he would have to personally pay for his wrongdoing. He showed no concern about being found guilty of multiple violations of the constitutional rights of the firefighters. The Respondents' unaltered conduct and attitude during and after the trial demonstrated the critical need for an

injunction if political rights in Knoxville were to be honored. The Trial Court entered the following injunction:

> Mayor Ashe is hereby enjoined from taking any adverse employment actions such as transfers, demotions, refusal to hire, refusal to promote, reduction of compensation or refusal to increase compensation of Knoxville Fire Department firefighters on account of their political beliefs and associations or their choice to remain neutral in political matters. This injunction shall not apply, however, to any Knoxville Fire Department employees who are not covered by the city's civil service regulations.

App. at 115a-116a.

Thereafter, in wholly separate proceedings, the Hearing Officer appointed by the City in its grievance process, found another (non-Plaintiff) Knoxville firefighter had been retaliated against because of his support of the Mayor's opponent in the 1999 campaign and that the retaliation had occurred after the injunction was entered, before the Sixth Circuit vacated it. App. at 125a-131a. Though appealed by the City, the finding that Robert Crisp was retaliated against because of his non-support of the Mayor, was affirmed by the local Chancery Court. App. at 120a.

On appeal of this matter, the Sixth Circuit vacated the injunction because it gave relief to a class without a class action being filed. Without overturning any fact findings of the Trial Court, the Sixth Circuit (arguably *dicta*) said there was no likelihood the Mayor's actions would be repeated. In reality, there was simply no evidence to counter-balance

the Respondents' history of political vindictiveness and unwillingness to accept the Sixth Circuit's, the jury's, or the Trial Court's declaration that their actions were unconstitutional. The proof established that the Mayor's disregard for constitutional rights spanned three decades, impacted more than these Petitioners, and his post-trial behavior demonstrated that he continued to trivialize his employees' political rights. His vindictiveness was not even deterred while the lawsuit was pending, or even after the injunction was entered by the Trial Court.

The Sixth Circuit then also reversed the Trial Court's holding that the Rule 68 offers were too vague and uncertain to be enforceable (thereby reversing the award of attorneys' fees), and held that the continuing violations doctrine could not apply because the 1995 transfers were "discrete acts." Petitioners timely appealed.

REASONS FOR GRANTING THE PETITION

I. Whether In The Face Of An Extended History Of Retribution Against Employees For Exercise Of Political Rights, Federal Courts Are Powerless To Prohibit The Guilty Public Official From Continuing The Pattern Of Violations.

The Sixth Circuit has decided this important question of federal law in derogation of relevant decisions of this Court and other circuits. Grounded in the practice of the high chancery courts of England, federal courts in equity have exercised the power and discretion to halt illegal conduct "from time immemorial." *Russel v. Farley*, 105 U.S. 433, 438 (1881). While this Court has taught both the critical importance of political freedom and the inherent responsibility of federal courts to guard

that freedom by restricting the unconstitutional conduct of offending officials, the Sixth Circuit believes the District Court to be without the responsibility or the power to issue the injunction that commanded the offending Mayor to cease his political retaliation against Knoxville's Civil Service firefighters.

In so doing, the Sixth Circuit took a position contrary to this Court's pronouncements that political freedom is not just a constitutional right, but a fundamental right. *See Elrod v. Burns*, 427 U.S. 347 (1976). Such rights require special vigilance because they are not only "deeply rooted in this Nation's history and tradition," but also because they are "implicit in the concept of ordered liberty." *Chavez v. Martinez*, __ U.S. __, 123 S. Ct. 1994, 2005 (2003), *quoting Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). When political freedom is infringed upon, the damage is two-fold: (1) the individual suffers personal loss of the exercise of that freedom in retaliation for exercise of it; and (2) the concept of ordered liberty is imperiled because the political process is corrupted or perverted by the threat that retaliation poses. *Elrod* at 357. To the extent that fear of retaliation causes citizens to shrink from the electoral process or feign support for a candidate, the threat of retaliation acts as the functional equivalent of a prior restraint on the exercise of First Amendment rights. Former Justice White, writing for this Court, wisely mandated that a governmental "work force should not be employed to build a powerful, invincible, and perhaps corrupt political machine." *United States Civil Service Commission v. Nat'l Association of Letter Carriers AFL-CIO*, 413 U.S. 548, 565 (1973). Further, he emphasized the importance of raising substantial barriers against those in power using government employees, paid for at public expense, to operate such a political structure. *Id.*

Recognizing the enormous implications of infringements on individual political freedom, this Court has consistently held that the loss of such rights, even for minimal periods of time, constitutes irreparable harm. *See Elrod* at 373-74. The greater damage (the harm to our ordered form of government) comes from the restraint that fear imposes on the exercise of political conscience and association. Where retaliation is a viable threat, the ballot box control that defines a representative government is perverted, if not destroyed. If the federal courts cannot act effectively to prohibit such political abuse, confidence in the representative form of government is likely to be eroded to a "disastrous extent." *Cf. United States Civil Service Commission v. Nat'l Assoc. of Letter Carriers AFL-CIO*, 413 U.S. 548, 564 (1973).

After the jury found multiple and repeated unconstitutional retaliations, the Trial Court restrained the offending Mayor from continuing his pattern of conduct, whether against the five firefighters named as Plaintiffs, or against any other civil service protected member of the Knoxville Fire Department. After hearing days of proof and closely watching the witnesses, the Trial Court believed it needed to emphasize "in a most clear and effective way that the freedoms of political belief and political association are hard-won and precious freedoms which are not to be trifled with and that the federal courts [will] effectively deal with those who attempt to do so." App. at 94a. The Sixth Circuit ruled the District Court had no power to address the clearly illegal conduct of the offending Mayor as to any victims except the named Plaintiffs, absent a class action.

Requiring a class action, of course, wholly fails to recognize the reality of the systemic injury: those whose speech have been inhibited by fear of retaliation cannot be identified for they are the ones too silenced by fear of losing livelihoods or job conditions

to exercise those fundamental rights. Moreover, under Fed. R. Civ. P. 23, there could never be a class representative for such a class of those afraid to speak. As soon as potential plaintiffs speak by identifying themselves, they not only risk retaliation, but are, by definition, no longer qualified to be a representative of the silenced class. The Sixth Circuit's analysis leaves the offending public official, whom the jury found guilty of a pattern and practice of retaliation, free to continue his reign of retaliation against all but the named Plaintiffs. That result only widens the circle of the intimidation by demonstrating to all citizens, who live in the offending official's shadow the near futility of undertaking to preserve constitutional rights and the courts' inability to deal effectively with proven, repeated violators.

In *Virginian Ry Co. v. System Federal No. 40*, 300 U.S. 515, 601 (1937), this Court explained that when the public interest is involved, "[c]ourts of equity may, and frequently do, go much further . . . than they are accustomed to go when only private interests are involved." The Sixth Circuit, however, has apparently taken the position that the dispute involved herein is a matter of private interest only, contrary to a long line of this Court's decisions recognizing the systemic importance of political freedom and contrary to the reality of what is necessary for this important, fundamental right to be adequately protected. The conduct of the offending Mayor herein was not directed only at the named Plaintiffs. His wrong-doing reached far beyond their private interests. Any effective remedy must reach not only the private interest, but also the over-riding public interests. As Petitioner, W. Potter, 44 year veteran of the Fire Department and Deputy Chief testified: "I feel like I don't deserve [the] treatment that I received. I am in my midnight hour at my career at the Fire Department. I don't want to leave it

where anyone else will have to suffer this humiliation. . . ." (Tr. at 201.)

The approach of the Sixth Circuit to this important issue directly conflicts with the recognized approach of other circuits which would focus on eradicating the illegal conduct rather than focusing on limiting relief to those courageous enough to exercise political freedom in the face of predictable reprisal. *See, e.g., Seibert v. Sperry Rand Corp.*, 586 F.2d 949, 951 (2d Cir. 1978) ("suit for injunction seeks not only to eliminate the effect of past wrongdoing, but . . . to prevent its recurrence"); *Bailey v. Patterson*, 323 F.2d 201, 206 (5th Cir. 1963) (the nature of the § 1983 rights to be vindicated requires a decree to run to the benefit not only of a plaintiff, but others similarly situated); *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711, 721 (7th Cir. 1969) (granting plant-wide injunction without a class action to effectively terminate the illegal practice); *Bresgal v. Brock*, 843 F.2d 1163, 1171 (9th Cir. 1988) ("[c]lass-wide relief may be appropriate even in an individual action." *Citing, Carmichael v. Birmingham Saw Works*, 738 F.2d 1126, 1136 (11th Cir. 1984)).

Few things can be more important than maintaining the integrity of the very system by which we elect our leaders who enact the statutes that control the conduct of our people, courts, and officials. The Sixth Circuit's unduly narrow view of the power of the District Court and its failure to recognize both the fundamental importance of political freedom and the impossibility of identifying those who have been intimidated from the exercise of such freedom, has been severely undercut by this Court's mandates in *Elrod* and its progeny, and has created a deep division in the circuits on this important issue.

II. Whether Vague, Ambiguous Rule 68 Offers Defeat The Congressional Intent Of Using 42 U.S.C. § 1988 To Encourage Private Citizens To Join In The Effort To Preserve Fundamental Rights.

This Court has long recognized that the most important, fundamental freedoms, though priceless, cannot easily be translated into the monetary remedies so familiar to the courts. In this case, for example, the jury found ten separate counts of constitutional violations of fundamental rights by Respondents, but initially awarded only a de minimus compensatory damage award and "hung" on punitive damages. After further deliberations, modest compensatory damages were awarded.

The lesson is that unless substantial monetary damages are incurred, public employees' fundamental rights are pursued only at great financial risk. Victims of political retaliation must either accept their fate or risk their life savings to vindicate those lost rights, if they can find counsel willing to oppose the powers that be.

Congress, recognizing the importance of guarding fundamental rights, and the difficulty in doing so in courts where injury traditionally is measured only in money, provided for recovery of attorneys' fees in 42 U.S.C. § 1988, seeking to encourage citizens to act as private attorney generals in the vigilant protection of the public interest and their own constitutional rights:

> When the Civil Rights Act of 1964 was passed, it was evident that enforcement would prove difficult and that the Nation would have to rely in

> part upon private litigation as a means of securing broad compliance with the law. . . . When a plaintiff . . . obtains an injunction, he does so not for himself alone but also as a 'private attorney general,' vindicating a policy that Congress considered of the highest priority. . . . If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts. Congress therefore enacted the provision for counsel fees. . . .

Newman v. Piggie Park Ent., Inc., 390 U.S. 400, 401 (1968).

The coercive effect of Rule 68 is magnified in § 1983 cases where Rule 68's reference to "costs" is read to include § 1988 attorneys' fees. While the fee shifting statute may make the risk associated with civil rights cases more palatable for those convinced that their case is meritorious, Rule 68 "ups the ante" by threatening to extinguish the fee shift if the plaintiffs' prediction of what a jury might do is less than perfect. The result is that the fee awards Congress intended to use to entice attorneys to assist private attorney generals is perverted into a high stakes bet on whether juries will place a high enough monetary value on priceless rights not amenable to monetary measure.

Fundamental fairness requires that equitable principles be applied to strike a balance between the rights and obligations of the parties. When the stakes are so high for civil rights plaintiffs, defendants should, at a minimum, bear the burden of articulating a clear, unambiguous offer. Valid monetary offers should not require calculations or assumptions by plaintiffs.

Non-monetary offers should be required to meet the specificity/ clarity standards required for injunctions. Admissions or non-admissions of guilt should be clearly set forth, and offers of reasonable attorneys' fees and costs should be explicitly stated. At an absolute minimum, the offers should meet the standard for valid contract offers and a respondent's unreasonable refusal to clarify ambiguous terms should invalidate the offer.

There is confusion in the circuits as to the degree of specificity required for a valid Rule 68 offer, and the lengths to which courts should go to "fill in the blanks" in ambiguous offers. The degree of specificity variance has expressed itself most often in the context of ambiguity as to whether attorneys' fees are included in the offer. Some circuits require explicit mention of attorneys' fees to deem them to be within the terms of the offers. *See, e.g., Nusom v. Comh Woodburn, Inc.*, 122 F.3d 830, 833 (9th Cir. 1997). ("defendants are the master of what their Rule 68 offers offer. If there is any room for doubt about what is included, or excluded, when 'costs' are offered, the defendant can craft its offer to make clear the total dollar amount that it will pay.")

Other courts find attorneys' fees sufficiently within the offer if the Rule 68 offer merely references "costs" or "judgment." *See, e.g., Le v. Univ. of Pennsylvania*, 321 F.3d 403, 409 (3d Cir. 2003) (language in an offer of $50,000 "plus costs" included attorneys' fees); *First Financial Ins. Co. v. Hammons*, 58 Fed. Appx. 31, 2003 WL 264700, at *3 (4th Cir. 2003) ("where 'attorneys' fees are actually a part of the substantive relief sought in [the] judgment, then using the word 'judgment' alone in an offer to settle the matter creates no ambiguity.'")

As to monetary judgments, some circuits require "easily comparable sums," or two precise numbers to compare, for the Rule 68 offer to be valid, while others place the burden on plaintiffs to perform calculations to evaluate the offer. *Compare Arkla Energy Resources v. Roye Realty and Developing, Inc.*, 9 F.3d 855, 867 (10th Cir. 1993), *with* the Sixth Circuits' decision herein.

More troublesome still is the variant approach in the circuits involving non-monetary relief. A Rule 68 offer places the offeree "at the mercy of the [defendants'] choice of language and willingness to conform it to the understanding of both parties." *Utility Automation 2000, Inc. v. Choctawhatchee Elec. Cooperative, Inc.*, 298 F.3d 1238, 1244 (11th Cir. 2002). For example, in the instant case, Respondents offered "an agreement. . . . not to engage in any discriminatory practices in the future based on political affiliation." App. at 110a. Despite that offer, Respondents had maintained throughout the litigation that the subject acts (transfers, denial of merit pay, failure to promote, demotion, and refusal to consider for merit pay), even if based on political animus, were not the kinds of acts that constitute political discrimination, per *Elrod*. It was, therefore, patently unclear whether the Rule 68 offer meant that Respondents would cease the complained of activity. Because agreements in consent decrees are generally viewed as contracts, and are therefore construed in favor of the person charged with contempt (*AccuSoft Corp. v. Palo*, 237 F.3d 31, 47 (1st Cir. 2001)), the non-monetary relief offered was ambiguous at best and likely ineffective. To make matters worse, when Petitioners requested clarification on those precise issues, Respondents simply stonewalled. Some circuits hold that a refusal to make a requested clarification invalidates the Rule 68 offers, others do not. *Compare, e.g., Arkla*, 9 F.3d at 867 *with* this case.

The Sixth Circuit effectively eviscerated 42 U.S.C. § 1988 by refusing to require a reasonably certain monetary offer or a clear non-monetary commitment, when clarification was requested. This Court's leadership is needed to insure that the circuits do not allow the law of Rule 68 to swallow 42 U.S.C. § 1983, 42 U.S.C. § 1988 and the clear intent of Congress – that private citizens, such as these firefighters, be enlisted in the ongoing effort to secure our most basic civil rights for the public interest.

III. Whether The Continuing Violations Doctrine Applies Where A Pattern Or Practice Of Unconstitutional Conduct Has Been Established.

In *National R.R. Passenger Corp. v. Morgan*, 122 S. Ct. 2061 (2002), this Court expressly reserved ruling on whether the continuing violation doctrine applies to pattern or practice cases brought by private litigants. *Id.*, at 2073 n.9. This important question of law needs to be answered in context of what limitations, if any, exist on the federal court's power to order the cessation of clearly unconstitutional conduct and the remedy for courageous individuals who have suffered retaliation for exercising political rights and for seeking to enforce those rights, not only for themselves, but for the public good.

In this case, the offending Mayor's unconstitutional retaliation created an atmosphere where the functional equivalent of a prior restraint on political freedom (fear of exercising political rights) existed as the result of the "edicts [and] acts [which were] fairly said to represent official policy." *Monell v. Dept. of Social Services*, 98 S. Ct. 2018, 2037-38 (1978). The jury found violations by the Mayor, Fire Chief,

and the City of Knoxville. Clearly, because this case involved a local government's custom that inflicted multiple constitutional injuries, spanning over three decades, this is a pattern or practice case. The jury found an over-arching scheme of political retaliation. The jury's verdict was not even challenged on appeal. It stands undisturbed.

The acts involved here were not "discrete" as in separate or disjunctive (BLACK'S LAW DICTIONARY, 466 (6th ed. 1990)). These acts were part of an over-arching pattern or practice of political retaliation that has plagued the City of Knoxville, Tennessee, since at least 1988, when the offending Mayor took office and began eliminating names from the Fire Department's hiring and promotion lists because the subject candidates and/or their relatives "did not do enough" for him in his campaign.

The individual Petitioners herein were subjected to repeated retaliation and the treatment of each individual Petitioner exposed only a part of the pattern of systemic discrimination against those who did not support the Mayor's political ambitions. In *Parham v. J.R.*, 442 U.S. 584, 611 (1979), this Court referred to discrete acts as those that "leav[e] no trail of circumstances." *Id.*, at 611-12. The trail of circumstances left by this offending Mayor's acts is a severely compromised political system that threatens the most fundamental rights of our representative democracy.

The danger in allowing the Sixth Circuit's decision to stand is substantial. Not only will the jurisprudence of the Sixth Circuit then tolerate continued assaults on fundamental constitutional rights, other circuits may read this Court's denial of Certiorari as an indication of this Courts' willingness to tolerate an ever-widening disrespect for political freedom.

CONCLUSION

If federal courts are powerless to provide an effective remedy for a long standing policy of retaliation for exercise of political conscience, and Rule 68 is applied unreasonably to defeat Congress' intent, our hard won freedoms will be secured only by the naïve hope that public officials will always act benevolently. History and common sense tell us that hope is futile. For this reason, Petitioners respectfully request that this Court grant Certiorari to resolve the important questions involved herein.

Respectfully submitted,

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